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RECTOR SCHWARZ ON THE MISHNEH TORAH OF MAIMONIDES.

Der Mischneh-Thorah. Ein System der mosaisch-talmudischen Gesetzeslehre, von Prof. Dr. A. SCHWARZ, Rektor der israelitisch-theologischen Lehranstalt in Wien.

THIS treatise by the Rector of the Jewish Theological Academy at Vienna forms the main contents of a twelfth annual report of the institution, the necessary business details as to domestic history being relegated to a brief appendix. These latter particulars are of considerable interest. It appears that the difficulties in conducting a Rabbinical seminary in Austria are similar to those met with nearer home; the students, at the time of admission, are insufficiently prepared and they find it difficult to reconcile the claims of secular, with those of specifically Jewish subjects. As a result, the Rector has occasion to deplore the fact that no Rabbinical diplomas have been granted to students of the college during the past year. The course of instruction is, however, of the most comprehensive character and it must be very thorough, if we are to judge its quality by the volume, now under review, which forms a fitting tribute to the memory of Maimonides, upon the seven-hundredth anniversary of his death.

It seems to me that one of the most interesting questions connected with the *Mishneh Torah* is this: What was the purpose of Maimonides in writing it? Did he aim at making the study of the Talmud more systematic or at bringing about its neglect? In the opinion of Professor Schwarz, the former view is the correct one. He quotes the passage where the ripe student is enjoined to devote the bulk of his time to "Gemara," i.e. to the reasoned study of tradition (Hilch. *Talmud Torah*, I, 11-12). Luzzatto has, however, pointed out long ago the weakness of the argument derived from this passage. Maimonides is here only a codifier and besides he includes in "Gemara" his favourite metaphysics¹. In his preface to the *Mishneh Torah*, he distinctly states that his work will, for the ordinary person, supersede all previous books, including the Talmud itself, so that people will be able to proceed to its study, immediately after having read the Pentateuch. It is true that in an apologetic letter to the

¹ See *Cerem Chemed*, III, p. 66 et seq.

Dayan of Alexandria (*Resp.* 140), Maimonides stated that his Code was only intended for beginners, that he did not desire to diminish the study of the Talmud or of Isaac Alfasi and that he had indeed read both these works with pupils. This remark was doubtless quite sincere, but I do not think that it represents the view, ultimately taken by Maimonides, as to the scope and purpose of his Code. His final feeling in the matter is best expressed in a letter written to his favourite pupil, Ibn Aknin. He there states that he originally wrote the Code for his own use, to avoid constant searches in the Talmud for necessary conclusions. "It has now spread throughout the Jewish world and is valued by all except the envious. A time will come when all Israel will desire this work only and none will read other books, except such as are willing to waste time without purpose." Further, when Ibn Aknin has established his own *Beth-hamidrash*, he is directed to devote himself exclusively to the works of Alfasi and Maimonides. He is not to waste his time with the details of Talmudic discussion: **ולא תכלה וחאבד זמנך בפרוש ובמשא** : **ובמתן של גמרא**. "These things," repeats Maimonides, "which I have let alone are waste of time and of small use." At the same time, whatever may have been the intention of Maimonides, Professor Schwarz is amply justified in claiming that the *Mishneh Torah* has been of immense assistance in making the study of the Talmud more comprehensive and in a sense more critical. Like many other great men, Maimonides built better than he knew.

Professor Schwarz devotes much attention to a study of the method in which Maimonides has arranged his material, in order to present Jewish law as an ordered whole. He shows that Maimonides, in dividing his subject into fourteen books, and in subdividing these books into eighty-three treatises, strove to display the individual precepts of the Law, as related to a central conception of Judaism. True religion depends upon knowledge of God, which is accordingly the theme of the first book of the Code. To know God aright is to love Him and the object of worship and of the ceremonial connected with worship is to stir up this love in the heart of man: the second book of the Code concerns itself therefore with the details of Jewish ritual. The remaining twelve books of the Code are similarly dealt with by Professor Schwarz and he shows how artistically Maimonides has arranged the different divisions of his subject, so as to form an organized whole. Of course, it is a more difficult task to work out the same idea, so as to justify the relative positions of the separate treatises, into which the books are subdivided. Considering that Maimonides had to deal with a theme, no less comprehensive than the conduct of life and thought by the individual Jew, together with

the whole system of Jewish polity, it is not wonderful that parts of his subject eluded classification. Professor Schwarz has to admit that it was not a very logical arrangement to include the laws of mourning in the "Book of Judges": Maimonides himself can only justify this classification by the sophistical argument that a person, executed by a Court of Justice, must be buried upon the same day and be honoured by no mourning ceremonials. Similarly one cannot help thinking that the reception of proselytes should not have been dealt with by Maimonides in his treatise on unlawful marriages, with which it is only accidentally connected. On the whole, however, Professor Schwarz is successful in showing how logically Maimonides has arranged his material. The analysis of the twelfth book of the Code is particularly happy: we are made to understand that the heading *קנין* refers appropriately to the laws, both of purchase and ownership. The method of investigation adopted by Professor Schwarz is not one, to which many books could be subjected: the Rabbis saw a danger incurred by *דורשי סמוכים* even in the Pentateuch itself. Maimonides, however, certainly devoted much attention to the arrangement of his books and himself attempted to discover upon what principles the different parts of the Mishna follow one another. His own work well repays study from this point of view; indeed, Professor Schwarz might perhaps have carried his investigation a little further and have compared the arrangement of the 613 Mosaic precepts in the Code, with that adopted by Maimonides in his *Sefer Hammitzvoth*.

Professor Schwarz passes on to deal with the *Mishneh Torah* at closer quarters and shows a fine appreciation of the clear and lively style in which Maimonides writes, justly observing that the work marks an epoch in the development of post-biblical Hebrew, besides being a "Volksbuch" in the best sense. One would expect a Code to furnish but dull reading, yet Maimonides makes the driest subject attractive. "He cares also for variety; sometimes he addresses us personally, sometimes he interposes a question, sometimes he illustrates by an analogy, sometimes he refers to the degeneracy of his age. Presently he relates to us some personal experience; at the right moment, his poetical or homiletic powers are displayed. At other times, he thunders against the Karaites, or glorifies Torah and science. He never leaves us without a good word and always ends a theme by raising us to a higher mood." In codifying the Talmud, Maimonides often throws light upon its meaning, particularly when he has to translate some saying of the Rabbis, from Aramaic to Hebrew. In such cases and also in others, where he has to select the passages to be cited, Maimonides becomes, in effect, a commentator

of the Talmud. This fact is demonstrated by Professor Schwarz, by means of many happy illustrations; he shows how Maimonides sometimes gives an added meaning to the Talmud, by the change of a single word. Our author then proceeds to show us how Maimonides condenses his material, blending together the statements of the Mishna and the comments of the Gemara into a compact whole. A number of examples are added, in which Maimonides explains the force of the laws he propounds, by means of concrete examples, taken from the Talmud. In yet another chapter, it is pointed out that Maimonides often quotes a maxim of law or morals, without mention of the Biblical verse, given as its basis in the Talmud, and that he, even, on occasion, refers such a maxim to a passage from Scripture, other than that employed by the earlier Rabbis. This characteristic of the Code of Maimonides has often been pointed out before¹ and it is perhaps emphasized by Professor Schwarz at excessive length. On the other hand, only meagre treatment is given by our author to the general principles, which are characteristic of the Code. His own original contributions, under this heading, are but of secondary importance and he mainly confines himself to a rather futile criticism of previous writers, who have attempted to classify the כללי הרמב"ם. In effect, he somewhat misunderstands their purpose, in propounding these principles. They are concerned not only with an analysis of the methods, adopted by Maimonides, but also with the question, how his Code is to be applied to the determination and enforcement of Jewish law, in actual practice. They are therefore justified in emphasizing such a proposition, as that proper religious decisions can only be arrived at in disputed cases, when we compare the words of Maimonides with those of the ancient authorities, upon which he relies. Similarly, it is quite reasonable from this point of view, to discuss the relative importance to be attached to the opinions of Maimonides and of the Tosaphists.

Finally, Professor Schwarz discusses, at great length, the relationship of the *Mishneh Torah* to the exegesis of the Halachah. This is by far the most original and valuable portion of the book. Maimonides carefully distinguishes the Halachah derived מפי השמועה from that derived מפי הקבלה. Professor Schwarz shows that the former heading refers to laws, based upon the traditional interpretation of the Pentateuch. Those traditions, which the Rabbis do not seriously base upon the language of the written Law, are described by Maimonides as מפי הקבלה. By collecting together the

¹ The literature on this subject is summarized in the *Yad Malachi* under the heading כללי הרמב"ם, sect. 4.

passages, 179 in number, where one or other of these phrases occurs in the Code, Professor Schwarz is able to throw much light upon the view, taken by Maimonides, as to the genesis and development of the traditional Law. Let us take one illustrative passage, where both these expressions are used together by Maimonides,—a passage containing also a valuable contribution to Biblical exegesis. The sin-offering, that varies according to a man's means, has to be brought, *inter alia*, to atone for the offence of entering unwittingly the sanctuary or eating the flesh of sacrifices, in a state of uncleanness. The liability to bring an offering, in these circumstances, is proved by the Rabbis from Scripture, by means of the kind of inference known as **בנין אב**. Maimonides, according to his wont, calls this a proof **מפי השמועה** (*Shegagoth*, X, 5). He proceeds to say that although this thing depends upon tradition (**מפי הקבלה**),—for the proof given by the Rabbis is of a non-natural kind,—it is really implied by the plain meaning of Scripture. As Professor Schwarz well remarks, Lev. v. 2–3, can only be rightly interpreted, as referring to the class of offender here indicated, for the Mosaic Law never regards a ritual uncleanness as sinful, unless the person so defiled comes into contact with sacred things. We have here a remarkable example of a Rabbinical interpretation seemingly far-fetched, but yet perfectly accurate¹.

Professor Schwarz does not sufficiently emphasize (except by a cursory reference on p. 163) the fact that Maimonides uses the term **מפי הקבלה** in another sense, besides that already mentioned, applying it to traditions derived from the Prophets and Hagiographa (**דברי קבלה**) or originating from Biblical authorities subsequent to Moses. Thus amongst the laws so derived, Maimonides mentions the secondary kinds of forbidden marriages, as formulated by Solomon, the rule based on 2 Sam. xii. 8, that a king must not have more than eighteen wives, and the regulations, inferred from the history of Absalom, respecting a life-long Nazirite².

It is to be regretted that Professor Schwarz has omitted to throw light upon the way in which Maimonides uses the phrase **מדברי סופרים**. As is well known, this is employed in two senses both in the Code and also in the *Sefer Hammitzvoth*. Not only is it applied to Rabbinic ordinances but also, in general, to Halachoth, based upon the thirteen exegetical principles of R. Ishmael, and to so-called

¹ In translating Lev. v. 2–3, the word **ואשם** must be rendered “in such a way as to incur guilt,” and not as E. V. “then he shall be guilty.”

² The passages, in the *Mishneh Torah*, here referred to are *Ishuth* i. 6, *Melachim* iii. 2, *Neziruth* iii. 12.

Sinaitic Halachoth. Maimonides declares that such Halachoth are only to be classed as Mosaic, when the Talmud contains an express statement to that effect. Thus the rule that a valid marriage can be solemnized by means of a money payment is called by Maimonides a "law of the scribes," although it is based upon a *נזירה שוה* (Ishuth i. 2). On the other hand, he includes amongst the 613 precepts of the Law some rules, which do not appear to be covered by his own principles, such as the regulation, based upon a traditional perversion of Deut. xxiv. 16, that the evidence of near relations is invalid. Of course, this part of the subject has been discussed at great length alike by those who criticise and by those who defend the view of Maimonides¹, but none of them explain his standpoint quite satisfactorily. It is at least clear that Maimonides limits the range of the written Law and distinguishes it from tradition far more sharply than other Talmudists have done.

After reading the treatise of Professor Schwarz, one appreciates more clearly than ever the paradox, presented by the Code of Maimonides. On the one hand, it is eminently suited to the beginner in Rabbinic, being so clear and lucid that he who runs may read. When, however, we attempt to trace the author's dicta to their source and to study the methods, in accordance with which the whole work was compiled, we are confronted by no ordinary difficulties. Many of these difficulties have been successfully dealt with by Professor Schwarz, and although he has not said the last word upon the subject, he has added materially to our knowledge of Maimonides, in the capacity of Talmudist and Codifier of Jewish Law.

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¹ The issue is presented, with extraordinary learning and ability, in the *Yad Malachi*, כללי דרמב"ם, sect. 7.